



Indian Health Service **FACT SHEET**

Tribal Self-Governance Amendments of 2000

This is the text of the Tribal Self-Governance Amendments of 2000, H.R. 1167, which was sent to the President for signature. This document is associated with IHS Media Advisory IHS-14-2000 of September 5, 2000.

***H.R.1167
One Hundred Sixth Congress
of the
United States of America
AT THE SECOND SESSION***

Begun and held at the City of Washington on Monday, the twenty-fourth day of January, two thousand

An Act

To amend the Indian Self-Determination and Education Assistance Act to provide for further self-governance by Indian tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Tribal Self-Governance Amendments of 2000'.

SEC. 2. FINDINGS.

Congress finds that--

- (1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;
- (2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the Indian tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;
- (3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;
- (4) the Tribal Self-Governance Demonstration Project, established under title III of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management;

(5) although the Federal Government has made considerable strides in improving Indian health care, it has failed to fully meet its trust responsibilities and to satisfy its obligations to the Indian tribes under treaties and other laws; and

(6) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that transferring full control and funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof)--

(A) is an appropriate and effective means of implementing the Federal policy of government-to-government relations with Indian tribes; and

(B) strengthens the Federal policy of Indian self-determination.

SEC. 3. DECLARATION OF POLICY.

It is the policy of Congress--

(1) to permanently establish and implement tribal self-governance within the Department of Health and Human Services;

(2) to call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance--

(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(B) to permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Federal services to Indian tribes;

(C) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

(D) to affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

(E) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

(G) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portion thereof) are assumed by Indian tribes;

(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

(I) to provide Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.

SEC. 4. TRIBAL SELF-GOVERNANCE.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) is amended by adding at the end the following:

`TITLE V--TRIBAL SELF-GOVERNANCE

`SEC. 501. DEFINITIONS.

`(a) IN GENERAL- In this title:

`(1) CONSTRUCTION PROJECT- The term 'construction project'--

`(A) means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities, as described in a construction project agreement; and

`(B) does not include construction program administration and activities described in paragraphs (1) through (3) of section 4(m), that may otherwise be included in a funding agreement under this title.

`(2) CONSTRUCTION PROJECT AGREEMENT- The term 'construction project agreement' means a negotiated agreement between the Secretary and an Indian tribe, that at a minimum--

`(A) establishes project phase start and completion dates;

`(B) defines a specific scope of work and standards by which it will be accomplished;

`(C) identifies the responsibilities of the Indian tribe and the Secretary;

`(D) addresses environmental considerations;

`(E) identifies the owner and operations and maintenance entity of the proposed work;

`(F) provides a budget;

`(G) provides a payment process; and

`(H) establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years.

`(3) GROSS MISMANAGEMENT- The term 'gross mismanagement' means a significant, clear, and convincing violation of a compact, funding agreement, or regulatory, or statutory requirements applicable to Federal funds transferred to an Indian tribe by a compact or funding agreement that results in a significant reduction of funds available for the programs, services, functions, or activities (or portions thereof) assumed by an Indian tribe.

`(4) INHERENT FEDERAL FUNCTIONS- The term 'inherent Federal functions' means those Federal functions which cannot legally be delegated to Indian tribes.

`(5) INTER-TRIBAL CONSORTIUM- The term 'inter-tribal consortium' means a coalition of two more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations.

`(6) SECRETARY- The term 'Secretary' means the Secretary of Health and Human Services.

`(7) SELF-GOVERNANCE- The term 'self-governance' means the program of self-governance established under section 502.

`(8) TRIBAL SHARE- The term 'tribal share' means an Indian tribe's portion of all funds and resources that support secretarial programs, services, functions, and activities (or portions thereof) that are not required by the Secretary for performance of inherent Federal functions.

`(b) INDIAN TRIBE- In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this title, the authorized Indian

tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this title). In such event, the term 'Indian tribe' as used in this title shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.

`SEC. 502. ESTABLISHMENT.

`The Secretary shall establish and carry out a program within the Indian Health Service of the Department of Health and Human Services to be known as the 'Tribal Self-Governance Program' in accordance with this title.

`SEC. 503. SELECTION OF PARTICIPATING INDIAN TRIBES.

`(a) CONTINUING PARTICIPATION- Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III on the date of the enactment of this title may elect to participate in self-governance under this title under existing authority as reflected in tribal resolution.

`(b) ADDITIONAL PARTICIPANTS-

`(1) IN GENERAL- In addition to those Indian tribes participating in self-governance under subsection (a), each year an additional 50 Indian tribes that meet the eligibility criteria specified in subsection (c) shall be entitled to participate in self-governance.

`(2) TREATMENT OF CERTAIN INDIAN TRIBES-

`(A) IN GENERAL- An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance provided the Indian tribe meets the eligibility criteria specified in subsection (c).

`(B) EFFECT OF WITHDRAWAL- If an Indian tribe has withdrawn from participation in an inter-tribal consortium or tribal organization, that Indian tribe shall be entitled to its tribal share of funds supporting those programs, services, functions, and activities (or portions thereof) that the Indian tribe will be carrying out under the compact and funding agreement of the Indian tribe.

`(C) PARTICIPATION IN SELF-GOVERNANCE- In no event shall the withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance.

`(c) APPLICANT POOL-

`(1) IN GENERAL- The qualified applicant pool for self-governance shall consist of each Indian tribe that--

`(A) successfully completes the planning phase described in subsection (d);

`(B) has requested participation in self-governance by resolution or other official action by the governing body of each Indian tribe to be served; and

`(C) has demonstrated, for 3 fiscal years, financial stability and financial management capability.

`(2) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY- For purposes of this subsection, evidence that, during the 3-year period referred to in paragraph (1)(C), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

`(d) PLANNING PHASE- Each Indian tribe seeking participation in self-governance shall complete a planning phase. The planning phase shall be conducted to the satisfaction of the Indian tribe and shall include--

`(1) legal and budgetary research; and

`(2) internal tribal government planning and organizational preparation relating to the administration of health care programs.

`(e) GRANTS- Subject to the availability of appropriations, any Indian tribe meeting the requirements of paragraph (1)(B) and (C) of subsection (c) shall be eligible for grants--

`(1) to plan for participation in self-governance; and

`(2) to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact and a funding agreement.

`(f) RECEIPT OF GRANT NOT REQUIRED- Receipt of a grant under subsection (e) shall not be a requirement of participation in self-governance.

`SEC. 504. COMPACTS.

`(a) COMPACT REQUIRED- The Secretary shall negotiate and enter into a written compact with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

`(b) CONTENTS- Each compact required under subsection (a) shall set forth the general terms of the government-to-government relationship between the Indian tribe and the Secretary, including such terms as the parties intend shall control year after year. Such compacts may only be amended by mutual agreement of the parties.

`(c) EXISTING COMPACTS- An Indian tribe participating in the Tribal Self-Governance Demonstration Project under title III on the date of the enactment of this title shall have the option at any time after the date of the enactment of this title to--

`(1) retain the Tribal Self-Governance Demonstration Project compact of that Indian tribe (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this title; or

`(2) instead of retaining a compact or portion thereof under paragraph (1), negotiate a new compact in a manner consistent with the requirements of this title.

`(d) TERM AND EFFECTIVE DATE- The effective date of a compact shall be the date of the approval and execution by the Indian tribe or another date agreed upon by the parties, and shall remain in effect for so long as permitted by Federal law or until terminated by mutual written agreement, retrocession, or reassumption.

`SEC. 505. FUNDING AGREEMENTS.

`(a) FUNDING AGREEMENT REQUIRED- The Secretary shall negotiate and enter into a written funding agreement with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

`(b) CONTENTS-

`(1) IN GENERAL- Each funding agreement required under subsection (a) shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding, including tribal shares of discretionary Indian Health Service competitive grants (excluding congressionally earmarked competitive grants), for all programs, services, functions, and activities (or portions thereof), that are carried out for the benefit of Indians because of their status as Indians

without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed.

`(2) INCLUSION OF CERTAIN PROGRAMS, SERVICES, FUNCTIONS, AND ACTIVITIES- Such programs, services, functions, or activities (or portions thereof) include all programs, services, functions, activities (or portions thereof), including grants (which may be added to a funding agreement after an award of such grants), with respect to which Indian tribes or Indians are primary or significant beneficiaries, administered by the Department of Health and Human Services through the Indian Health Service and all local, field, service unit, area, regional, and central headquarters or national office functions so administered under the authority of--

`(A) the Act of November 2, 1921 (42 Stat. 208; chapter 115; 25 U.S.C. 13);

`(B) the Act of April 16, 1934 (48 Stat. 596; chapter 147; 25 U.S.C. 452 et seq.);

`(C) the Act of August 5, 1954 (68 Stat. 674; chapter 658);

`(D) the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);

`(E) the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.);

`(F) any other Act of Congress authorizing any agency of the Department of Health and Human Services to administer, carry out, or provide financial assistance to such a program, service, function or activity (or portions thereof) described in this section that is carried out for the benefit of Indians because of their status as Indians; or

`(G) any other Act of Congress authorizing such a program, service, function, or activity (or portions thereof) carried out for the benefit of Indians under which appropriations are made available to any agency other than an agency within the Department of Health and Human Services, in any case in which the Secretary administers that program, service, function, or activity (or portion thereof).

`(c) INCLUSION IN COMPACT OR FUNDING AGREEMENT- It shall not be a requirement that an Indian tribe or Indians be identified in the authorizing statute for a program or element of a program to be eligible for inclusion in a compact or funding agreement under this title.

`(d) FUNDING AGREEMENT TERMS- Each funding agreement under this title shall set forth--

`(1) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered; and

`(2) for the items identified in paragraph (1)--

`(A) the general budget category assigned;

`(B) the funds to be provided, including those funds to be provided on a recurring basis;

`(C) the time and method of transfer of the funds;

`(D) the responsibilities of the Secretary; and

`(E) any other provision with respect to which the Indian tribe and the Secretary agree.

`(e) SUBSEQUENT FUNDING AGREEMENTS- Absent notification from an Indian tribe that is withdrawing or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, and the terms of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.